IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

MONDAY, THE 10TH DECEMBER 2007 / 19TH AGRAHAYANA 1929

Crl.Rev.Pet.No. 442 of 2000()

(AGAINST THE JUDGMENT IN CRL.APPEAL 286/97 OF THE SESSIONS COURT, KOZHIKODE DATED 25/01/2000 WHICH WAS AGAINST THE JUDGMENT IN C.C.981/94 OF THE JUDICIAL FIRST CLASS MAGISTRATE-I, KOZHIKODE DATED 28/11/1997)

REVN. PETITIONER: ACCUSED:APPELLANT:

T.ARAVINDAKSHAN,
S/O.KRISHNAN NAIR,
RESIDING AT VILLIYAPALLY, VADAKARA,
KOZHIKODE.

BY ADV. SRI.V.V.SURENDRAN
SRI.P.M.PADMANABHAN

RESPONDENTS: RESPONDENTS:COMPLAINANT:

1. **A.KUTTYKRISHNAN,**
   S/O.GOVINDAKUTTY KURUP,
   AYYALIN, MEDICAL COLLEGE POST,
   KOZHIKODE.

2. **STATE OF KERALA,**
   REPRESENTED BY PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM.

R1 BY ADV. SRI.PHILIP ANTONY CHACKO
R2 BY PUBLIC PROSECUTOR SRI. K.C. SANTHOSH KUMAR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 10/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

KSS

J.B. Koshy, J.

Crl.R.P. No. 442 of 2000

Dated this the 10th day of December, 2007

Order

Revision petitioner was convicted for offence punishable under section 138 of the Negotiable Instruments Act as it was found that cheque issued by him for Rs.20,000/- was returned with an endorsement "funds insufficient.". First respondent filed complaint after complying with all statutory formalities as the amount was not paid despite written demand. The complainant was examined to prove the return of cheque for insufficiency of funds. Ext.P1 was the cheque and Ext.P2 was the bank memo. Ext.P3 is the lawyer's notice and Ext.P3 (a) is the postal receipt. Ext.P4 is the acknowledgment card. But, no reply was sent to the notice. The amount was also not paid. The only contention taken up was that the cheque was issued only as a security and not as a legal enforceable liability. But, according to him, Ext.P1 was misused in favour of the complainant. It is well settled law that even if the cheque was given as a security, it is a valid consideration. Contention of the accused was that the complainant has borrowed money from a co-operative bank which shows that he was unable to pay the amount of Rs.20,000/-. Merely because he borrowed

money from a bank, it cannot be stated that there is no capacity to pay back the amount of Rs.20,000/-. In 313 statement, his case was that cheque given to some other person was misused. The case of the accused at the time of evidence and under section 313 Cr. P.C. were different. When the complainant was cross-examined, the only defence was that the cheque was given as a security. There is not even a prima facie evidence adduced to prove the defence of the accused taken in 313 statement. Since the signature in the cheque was admitted, there was no necessity to send the cheque to a handwriting expert. Such a request was not made before the trial court. Presumption available to the holder of the cheque under the Negotiable Instruments Act was not rebutted in this case. Trial court found that the complainant has proved the case. The conviction and sentence passed by the trial court was upheld by the appellate court. There is no ground to interfere in the concurrent findings.

Considering the nature of evidence, I convert the imprisonment of six months into imprisonment for a period of two weeks and to pay a compensation of Rs.20,000/-. If the fine is not paid within one month from today, it shall be realised as provided under section 431 read with section 421 of the Code of Criminal

Procedure and given to the complainant. This order is certified to the trial court for implementation.

J.B.Koshy
Judge

vaa

J.B. KOSHY, J.

Crl.R.P. No.442/2000

Order

Dated:10th December, 2007